an order for the re-trial of the issue whether or not the first respondent is also liable for damages for wrongful conversion.

Tan Ah Tah F.J. and **Chua J.** concurred.

Appeal allowed.

Solicitors: *Allen & Gledhill; Laycock & Ong.*

UNITED OVERSEAS BANK LTD. v. SIN BIAN SEA TRANSPORT

[O.C.J. (Ambrose J.) July 8, 1967]

[Singapore — Suit No. 973 of 1965]

Landlord and Tenant — Bankruptcy of tenant — Tenancy vesting in Official Assignee — Subletting — Licensees — Trespass — Claim to be tenants under oral assignment — Whether valid — Statute of Fraud, s. 3 — Control of Rent Ordinance (Cap. 242), ss. 26 & 27.

One Mathi was a monthly tenant of No. 6, Bonham Street, Singapore, (hereinafter called the said premises) from 1947. In 1958 Mathi was adjudicated a bankrupt and thereupon his contractual tenancy of the said premises vested in the Official Assignee. The plaintiffs bought the premises from the previous owners in May 1963. They then duly determined the Official Assignee's contractual tenancy on August 31, 1963 by a notice to quit and they subsequently obtained a declaration against the Official Assignee to that effect in June 1964 and a similar declaration and an order for possession against Mathi in February 1965. The plaintiffs then obtained possession of that part of the premises not occupied by the defendants and in this action they sought a declaration that the defendants were trespassers of that part of the premises occupied by them and an injunction restraining them from further occupying the said part.

The plaintiffs alleged that the defendants had been occupying that part of the premises since February 1960. The defendants pleaded that they became tenants of that part of the premises in or about 1947 when they were granted their tenancy by the Singapore Lighter Owners Association and have remained in occupation since and that they were statutory tenants under sections 26 and 27 of the Control of Rent Ordinance. Alternatively they alleged that the association orally assigned that part of the tenancy held by the association to them sometime in 1960.

Held: (1) the association became the sub-tenant of Mathi on September 27, 1947 in respect of that part of the premises more particularly indicated in the plan attached to the statement of claim;

(2) the defendants and the eleven others who shared that part of the premises did not have exclusive possession of the same in 1947 and they were therefore merely licensees of the association;

(3) the defendants did not become sub-tenants of the Official Assignee under the oral assignment of the association's sub-tenancy made by the association in or about 1960 because the oral assignment in this case was void under sections 3 and 4 of the Statute of Frauds. It followed therefore that the association which became the sub-tenant of the Official Assignee on September 19, 1958 on the vesting of Mathi's contractual tenancy in the Official Assignee, continued to be such sub-tenant even after the purported assignment of its sub-tenancy and the present defendants remained licensees of the association;

(4) accordingly the submission that the defendants had no right prior to February 20, 1960 to use the part of the premises occupied by them should be rejected and the claim for a declaration and injunction dismissed;

(5) the court was not in a position to adjudicate on the alternative claim for possession because the association was not a party to this action and as the premises was controlled premises.

Cases referred to:—

(1) *Khalik* v. *Thai Craft Ltd.* [1966] 2 M.L.J. 112, 114.

(2) *Botting* v. *Martin* (1808), 1 Camp. 317.

CIVIL SUIT.

K. S. Chung for the plaintiffs.

C. S. Wu for the defendants.

Cur. Adv. Vult.

Ambrose J.: In this action the plaintiffs claim a declaration that the defendants are trespassers of that part of the premises known as No. 6 Bonham Street, Singapore, which is at present occupied by the defendants, and an injunction restraining them from further occupying the said part. Alternatively the plaintiffs claim possession of the said part.

The following facts are not disputed. One V. Mathiaparanam, formerly trading as V. Mathi & Co., was a monthly tenant of the premises from 1947. I will call him Mathi. On the 19th September, 1958, Mathi was adjudicated a bankrupt and thereupon his contractual tenancy of the premises vested in the Official Assignee. The plaintiffs bought the premises from the previous owners on the 22nd May, 1963. They duly determined the Official Assignee's contractual tenancy on the 31st August, 1963, by a notice to quit dated the 31st July, 1963. In Suit No. 310 of 1964 they obtained a declaration against the Official Assignee to that effect on the 22nd June, 1964. In the same suit they obtained a similar declaration and an order for possession against Mathi on the 5th February, 1965. The present plaintiffs have obtained possession of that part of the premises which is not occupied by the present defendants.

It is alleged in the statement of claim that the defendants have been occupying since the 20th February, 1960, that part of the premises which is now occupied by them. The defendants plead that they first became tenants of that part of the premises in or about 1947 when they were granted their tenancy by the Singapore Lighter Owners' Association and have remained in occupation ever since. They further plead that at the commencement of their tenancy that part of the premises was occupied by the defendants with eleven other co-tenants, each contributing an agreed sum towards the monthly rental payable to the association. They go on to plead that in or about March, 1960, the defendants at the association's request agreed thereafter to

collect on the association's behalf from the defendants' co-tenants the various monthly sums payable by them and from the collection to pay a sum of $140 each month to the association's immediate landlord, Mathi, and to pay the charges for telephone, water, electricity, newspaper, caretaker, and maintenance and repairs. The defendants claim to be lawful tenants of the association and protection under sections 26 and 27 of the Control of Rent Ordinance as statutory tenants of the plaintiffs after the determination of the Official Assignee's tenancy on the 31st August, 1963. Further and alternatively the defendants plead that in or about March, 1960, the association orally assigned to them the tenancy of that part of the premises which was previously held by the association, and that the assignment was not prohibited under the terms of the association's tenancy.

In their amended reply, the plaintiffs plead as follows. In or about 1946 Mathi purported to grant a sub-tenancy to the Singapore Lighterage Co. Ltd., an unincorporated body or society or an unregistered company. The purported grant was invalid and inoperative. The Singapore Lighter Owners' Association of whom the defendants and eleven others claim to have held as co-subtenants was never at any time a tenant or subtenant of Mathi. In the alternative, if the association was a tenant or subtenant of Mathi, the association only gave licences to the defendants and the eleven others to use various parts of the premises. In the further alternative, if the association was a tenant or subtenant of Mathi, the oral assignment was void by reason of sections 3 and 4 of the Statute of Frauds.

The first question for determination is whether the association ever became a subtenant of Mathi.

On this question counsel for the plaintiffs makes the following submission. The association was an unincorporated body and an unregistered society in 1946. It was registered as a trade union on the 27th September, 1947. The association paid rent to Mathi from 1946 to 1st March, 1960. Receipts for the rent were issued in favour of Singapore Lighterage Co. Ltd., which was the name the members of the association proposed to use on incorporating themselves. According to the receipts the Singapore Lighterage Co. Ltd. was the subtenant of Mathi. The proposed company was never formed.

Counsel for the defendants makes this submission in reply. The association acquired the capacity to hold a subtenancy on the 27th September, 1947, when it was registered as a trade union. From then the association paid rent every month up to and including February, 1960 to Mathi. Mathi knew the rent was coming from the association. Mathi's intention was to give the subtenancy to the association.

I hold that the association became the subtenant of Mathi on the 27th September, 1947, in respect of that part of the premises which is shaded green on the plan showing the premises which is annexed to the statement of claim.

The second question for determination is whether the defendants became subtenants of the association in 1947 in respect of that part of the premises which is shaded green in the plan. On their own evidence they shared that part of the premises with eleven others, and they did not have exclusive possession of that part of the premises in 1947. I find accordingly that they and the eleven others were merely licensees of the association.

The third question for determination is whether the defendants became subtenants of the Official Assignee under the oral assignment of the association's subtenancy made by the association in or about March 1960. It is not disputed that section 3 of the Statute of Frauds, 1677, applies in Singapore: *Khalik* v. *Thai Craft Ltd.*[1] This section provides that no leases, estates or interests (not being copyhold or customary interests) in any lands, tenements or hereditaments shall be assigned, granted or surrendered unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law. In *Botting* v. *Martin*,[2] it was held that a parol assignment of a lease from year to year, granted by parol, was void under this section. I hold accordingly that the oral assignment in the present case is void. It follows therefore that the association which became the subtenant of the Official Assignee on the 19th September, 1958, on the vesting of Mathi's contractual tenancy in the Official Assignee, continued to be such subtenant even after the purported assignment of its subtenancy; and the present defendants remained licensees of the association.

The basis of the plaintiffs' contention that the defendants are trespassers is that the defendants had no rights prior to the 20th February, 1960, and that on that date Mathi could not confer any right on the defendants as he himself was a mere licensee of the Official Assignee. I reject the submission that the defendants had no right prior to the 20th February, 1960, to use the part of the premises occupied by them.

The result is that I dismiss the claim for a declaration that the defendants are trespassers of that part of the premises which is at present occupied by them and an injunction restraining them from further occupying the said part.

As regards the alternative claim for possession, it seems to me that I am not in a position to adjudicate upon it as the association has not been made a party to this action and as the

premises are subject to the Control of Rent Ordinance.

And I order the plaintiffs to pay the defendants the costs of this action, to be taxed on the higher scale.

Claim dismissed.

Solicitors: *Chung & Co.; Donaldson & Burkinshaw.*

TAN LIAN CHYE v. MALAYAN RAILWAY ADMINISTRATION

[O.C.J. (Winslow J.) August 17, 1967]

[Singapore — Suit No. 444 of 1966]

Tort — Negligence — Child run over on railway line — Whether licensee or trespasser — Duty of care and protection — Whether steps taken to warn all concerned of dangers — Habitual and knowing acquiescence — Failure to establish negligence.

The plaintiff an 8 year old boy was run over on the railway line in Singapore by a train under the control and management of the driver and guard employed by the defendants. The plaintiff suffered severe injuries to his left leg which was badly crushed and had to be amputated above the knee. In this action the plaintiff sued the defendants (by his mother and next friend) for damages for personal injuries caused by the negligence of the defendants or their servants or agents. The defendants admitted the accident but denied that it was caused solely by their own negligence or that of their servants or agents. They claimed that the accident was caused solely or alternatively contributed to by the negligence of the plaintiff. The defendants also alleged that the cause of action did not arise within the 12 months next before the date of issue of the writ and was barred by the Public Authorities Protection Ordinance, 1948 which was extended to Singapore by the Modification of Laws (Government Proceedings and Public Authorities Protection) (Extension and Modification) Order, 1965.

In an action for damages by his mother and next friend against the defendants:—

Held: the plaintiff was, in the circumstances, a trespasser and went on to the railway siding without permission, and that the defendants owed him no duty to protect him from injury. Claim dismissed.

Cases referred to:—

(1) *Gajadhar* v. *Seth Neghraj* A.I.R. 1930 Nagpur 8.

(2) *Narainrao* v. *Seth Hanumantram* A.I.R. 1930 Nagpur 275.

(3) *S. Sircar* v. *Abdool Hakeem* (1880), I.L.R. 5 Calcutta 602.

(4) *Wong See Leng* v. *C. Saraswathy Ammal* [1954] M.L.J. 141.

(5) *Gough* v. *National Coal Board* [1954] 1 Q.B. 191.

(6) *Mourton* v. *Poulter* [1930] 2 K.B. 183.

(7) *Addie & Sons Ltd.* v. *Dubbreck* [1929] A.C. 358 at p. 372.

(8) *Hardy* v. *Central London Railway Co.* [1920] 3 K.B. 459.

CIVIL SUIT.

K. C. Chan for the plaintiff.

P. J. Mooney for the defendants.

Cur. Adv. Vult.

Winslow J.: In this action the infant plaintiff sues the defendants (by his mother and next friend) for damages for personal injuries suffered by him on 6th December, 1960 and alleged to have been caused by the negligence of the defendants or their servants or agents. He claims that he was run over on the railway line near the premises of Archipelago Brewery Limited, Singapore by a train under the control and management of the driver and the guard employed by the defendants.

The plaintiff, unfortunately, suffered severe injuries to his left leg which was badly crushed and had to be amputated above the knee. Damages have been agreed in the sum of $27,000.

Particulars of the defendants' negligence are set out as follows:—

(a) failing to fence up the railway siding;

(b) failing to keep any or proper look out;

(c) failing to observe the presence of children in particular the plaintiff near the train while shunting;

(d) failing to take special care in preventing children in particular the plaintiff from going near the train which is an allurement to children;

(e) failing to stop, slow down or swerve or in any way so to manage or control the train so as to avoid running over the plaintiff.

The defendants admit the accident but deny that it was caused solely by their own negligence or that of their servants or agents. They claim that the accident was caused solely, or alternatively, contributed to by the negligence of the plaintiff.

Particulars of the plaintiff's negligence are set out as follows:—

(a) Coming on to the railway siding without permission;

(b) Ignoring a warning and order to keep away from the train;

(c) Jumping or attempting to jump onto or clinging or attempting to cling to the train after it started to move.

A further line of defence is that the alleged cause of action did not arise within the twelve months next before the date of issue of the writ herein and is barred by the Public Authorities Protection Ordinance, 1948 which was extended to Singapore by the Modification of Laws (Government Proceedings & Public Authorities Protection) (Extension and Modification) Order 1965.